

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1487 of 1998

in

SPECIAL CIVIL APPLICATION No 335 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

LAXMIBEN HARIBHAI AHIR WD/O HARIBHAI AHIR
Versus
COLLECTOR

Appearance:

MR AS SUPEHIA for Appellant
MR RC KODEKAR for Respondent Nos. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 09/03/2000

ORAL JUDGEMENT (Per J.M. Panchal, J.):

1. Judgment dated November 21, 1998 rendered by the learned Single Judge in Special Civil Application No. 335 of 1998 declining to direct the respondents to grant second and third higher grade scales to late husband of the petitioner from August 4, 1984 and August 4, 1993 respectively and to pay resultant amount to the petitioner with 12% interest as also to revise pension payable to the petitioner, is the subject matter of challenge in the present appeal which is filed under clause 15 of the Letters Patent.

2. Deceased Haribhai Ratanji Ahir, who was husband of the petitioner, was employed as Stenographer Grade II under the Collector, Surat, by an order dated Nil July 1966. He had joined duties on August 4, 1966. During his whole career he was not promoted to higher post because of stagnation in the cadre due to absence or restricted chances of promotion. On attaining the age of superannuation he had retired from service on June 30, 1994 while holding the same post. He expired on August 14, 1997. The petitioner who is his widow, is his legal representative and entitled to family pension.

3. To deal with the problem of stagnation in many cadres due to absence or restricted chances of promotion, Government of Gujarat had announced the Scheme for Higher Grade Scale vide Government Resolution of even No. dated February 20, 1991. As per the said scheme, the first higher grade scale was receivable on completion of 9 years of service whereas second higher grade scale was payable on completion of 18 years of service and the third higher grade scale was permissible on completion of 27 years of service. For the purpose of computing of nine years service in the relevant scale, all services entitling an employee for increment in that scale were required to be taken into account. The scheme of higher grade scale envisaged by Government Resolution dated February 20, 1991 was substituted by another scheme which was brought into force vide Government Resolution dated July 5, 1991. As per the Scheme of July 5, 1991, an employee who had not got any promotion on his completion of 9, 18 or 27 years of service as on June 1, 1987 was entitled to the benefit of the scheme. According to the petitioner, her late husband who was appointed in the year 1966 was entitled to get the benefit of first higher grade scale in the year 1975, the second higher grade scale in the year 1984 and the third higher grad scale in the year 1993. The husband of the petitioner was granted the first higher grade scale on June 1, 1987. The above referred to two resolutions were modified by State Government vide Government Resolution dated August 16,

1994, a copy of which is produced by the petitioner at Annexure D to the petition. As per the resolution dated August 16, 1994, those employees who have completed 9 years or more service as on June 1, 1987, are entitled to benefit of the first higher grade and the benefit of the second and the third higher grade can be availed of by them on completion of 18 years and 27 years of service to be counted from June 1, 1987. However, clause 3 (28) of the said Scheme provides that those employees who had retired prior to August 1, 1994 and who were not given benefit of higher grade scale due to administrative difficulties were entitled to receive the said benefit under the old scheme i.e., the scheme which was introduced by the Government vide Resolution dated July 5, 1991. It is also further provided in the said clause that in case of those employees who had retired prior to July 31, 1994, re-fixation of pay was not required to be done nor any recovery was to be effected. Further, it is stipulated therein that pension payable to the employees who had retired prior to July 31, 1994 was to be fixed on the basis of higher grade scale payable to such employees under the old scheme.

4. By letter dated April 4, 1994, the late husband of the petitioner had requested the Collector to grant him the second and the third higher grade scales. The same request was repeated by him vide letter dated April 15, 1995 after he had retired from service on June 30, 1994. By letter dated May 5, 1997, the Collector had informed the petitioner's husband that in view of paragraph 3 of the Government Resolution dated August 16, 1994 he was not entitled to the benefit of the second and the third higher grade scale and, therefore, his request for according the said benefits to him was rejected. This letter is produced by the petitioner at Annexure I to the petition. Thereafter the husband of the petitioner had filed Appeal no. 308 of 1997 before the Gujarat Civil Service Tribunal, Gandhinagar. The record shows that the said appeal was presented on September 16, 1997 i.e., after his death. Therefore the Tribunal did not admit the appeal and disposed it of by order dated October 23, 1997. The petitioner has averred in the petition that as per the Government Resolution dated July 5, 1991, three higher grade scales were to be granted to an employee on completion of 9, 18 and 27 years of service counting from the date of continuous working in the same pay scale and as the husband of the petitioner had become entitled to the first higher grade scale from August 4, 1975, the second higher grade scale from August 4, 1983 and the third higher grade scale from August 4, 1993 the respondents should be directed to grant those benefits to

the petitioner and re-fix pension payable to her accordingly. What is pleaded by the petitioner is that those employees who had retired before July 31, 1994 and who could not be granted the benefit of higher grade scale due to administrative reasons are covered by clause 3 (28) of the Resolution dated August 16, 1994 and as late husband of the petitioner was not granted the benefit of second and third higher grade scales due to administrative reasons, the petition should be accepted. According to the petitioner, main clause 3 of the resolution dated August 16, 1994 is merely introductory in character and does not cover the case of her late husband but her husband was entitled to the benefit of higher grade scales as per clause 3 (28) of the Government Resolution dated July 5, 1991. Under the circumstances, Special Civil Application No. 335 of 1998 was filed by her with a prayer to direct the respondents to grant the second and the third higher grade scales with effect from August 4, 1984 and August 4, 1993 respectively to her husband and to pay the resultant amount to the petitioner with 12% interest as also to re-fix her pension accordingly.

5. Though the respondents were duly served, no reply affidavit was filed by any of the respondents controverting the averments made in the petition. The learned Single Judge has held that the benefit of clause 3 (28) of the Resolution dated August 16, 1994 is applicable to those employees who had retired after July 31, 1994 and as the husband of the petitioner had retired before July 31, 1994 the petitioner was not entitled to the reliefs claimed in the petition. In view of this conclusion, the learned Single Judge has dismissed the petition by the impugned judgment giving rise to the present appeal.

6. Mr. A.S. Supehia, learned counsel for the appellant, contended that clause 3 (28) of the Government Resolution dated August 16, 1994 specifically provides that those employees who had retired prior to July 31, 1994 and who were not granted the benefit of higher grade scale due to administrative reasons should be granted the benefit of higher grade scales as per the earlier resolution as well as their pension should also be fixed accordingly and, therefore, the learned Single Judge was not justified in denying the benefits which were available to the husband of the appellant under the resolution dated July 5, 1991 on the ground that the husband of the appellant had retired after July 31, 1994. It was stressed that though old scheme of higher grade scale envisaged by Government resolution dated July 5,

1991 is superseded by Government resolution dated August 16, 1994, the same continues to apply to those employees who had retired prior to July 31, 1994 and, therefore, the petition filed by the petitioner ought to have been accepted by the learned Single Judge. According to the learned counsel for the appellant, the main clause 3 of the resolution dated August 16, 1994 is merely introductory in character and does not cover the case of the husband of the petitioner since his case was covered by the earlier resolution dated July 5, 1991 as explained in clause 3 (28) of the Government Resolution dated August 16, 1994 and, therefore, the appeal should be allowed.

7. Mr. R.C. Kodekar, learned counsel for the respondents, contended that as per clause 3 of the Government Resolution dated August 16, 1994, the second higher grade scale can be given to an employee if he, after June 1, 1986, completes 18 years of service in the concerned pay scale or if the employee had reached the maximum pay scale of promotion and completes one year thereafter and is stagnated and as the late husband of the petitioner was not entitled to second higher grade scale in terms of clause 3 of the Government Resolution dated August 16, 1994, the learned Single Judge was justified in dismissing the petition. Placing reliance on clause 3 (26) of the Government Resolution dated August 16, 1994, learned Government counsel pleaded that the scheme is retrospective in character i.e., that the resolution is applicable from June 1, 1987 and as the late husband of the petitioner had not completed qualifying service to entitle him to receive the second higher grade scale on June 1, 1987 the respondents were justified in not according benefits of the second and the third higher grade scales to the late husband of the petitioner. What was asserted on behalf of the respondents was that the Government resolution dated July 5, 1991 was not at all applicable to the case of the late husband of the appellant and, therefore, the appeal should be dismissed.

8. We have heard learned counsel for the parties and taken into consideration the documents which form part of the record of the petition. It is not in dispute that to deal with the problem of stagnation in many cadres due to absence or restricted chances of promotion, Government of Gujarat had announced the scheme of higher grade scales vide Government resolution of even number dated February 20, 1991. The said scheme was subsequently superseded by another Government resolution dated July 5, 1991, a copy of which is produced by the petitioner at Annexure C to

the petition. As per the said scheme the first higher grade scale was to be granted on completion of 9 years of service whereas the second higher grade scale was payable on completion of 18 years of service and the third higher grade scale was to be granted on completion of 27 years of service. The petitioner's husband was granted the first higher grade scale on July 1, 1987. Keeping in view the representations of employees about inconsistency in pay, stagnation and restricted chances of promotion, the matter was reviewed by Government and Resolution dated August 16, 1994 was introduced to grant certain benefits to State employees. As we are concerned with interpretation of clause 3 (28) of this resolution it would be relevant to notice the scheme envisaged by this resolution. Clause 3, inter alia, provides that the second higher grade scale will be given to an employee if he, after June 1, 1986 completes 18 years of service in the concerned pay scale or if the employee has reached the maximum pay scale of promotion and completes one year thereafter and is stagnated, whichever is later. Clause 3 (26) of the Government resolution dated August 16, 1994 provides that the scheme would apply to the employees retrospectively with effect from June 1, 1987. Free English translation of clause 3 (28) which is material for our purpose, is as under:

"In cases of those employees who have retired prior to August 1, 1994, no recovery is to be made nor re-fixation of pay is to be done under this resolution. In the cases of those employees who have retired prior to July 31, 1994, if higher grade scale was not granted due to administrative reasons upto July 31, 1994, the respective higher grade scale admissible under the previous directions should be granted and the pension of those employees should be determined on that basis. In cases of those employees who have retired prior to July 31, 1994 and who are granted benefit of second and the third higher grade scales, their pension should be accordingly determined and no recovery shall be made."

9. A close scrutiny of resolution dated August 16, 1994 makes it manifest that a distinction is made between the employees who have retired or continued in service after July 31, 1994 and who have retired prior to July 31, 1994. The introductory part of paragraph 3 of the resolution dated August 16, 1994 stipulating that the second higher grade scale will be given to an employee if he, after June 1, 1986 completes 18 years of service in the same pay scale or he had reached the maximum pay

scale of promotion and completes one year thereafter and is stagnated whichever is later, is not applicable to the case of the late husband of the petitioner because the husband of the petitioner was not in service when the resolution was introduced on August 16, 1994. The late husband of the petitioner having retired from the service on June 30, 1994, his case was squarely covered by the provisions contained in clause 3 (28) of the Government resolution dated August 16, 1994. It is not the case of the respondents that before July 31, 1994 the second or the third higher grade scales were granted to the late husband of the petitioner. As the husband of the petitioner had retired prior to July 31, 1994, he was entitled to the benefits of the second and the third higher grade scale in terms of Government resolution dated July 5, 1991 because of specific provisions made in clause 3 (28) of the Government resolution dated August 16, 1994. The husband of the petitioner had retired prior to July 31, 1994 and, therefore, it was incumbent on the respondents to grant benefit of the second and the third higher grade scale to him in terms of earlier resolution dated July 5, 1991. The view taken by the learned Single Judge that the benefit of the second and the third higher grade scale under Government Resolution dated July 5, 1991 would be available to those employees who have retired after July 31, 1994 is erroneous and contrary to express provisions contained in clause 3 (28) of the Government resolution dated August 16, 1994. A bare reading of clause 3 (28) makes it manifest that benefit of earlier Government resolution would be available to those employees who had retired before July 31, 1994 and not to those employees who had retired after July 31, 1994. In our view, the learned Single Judge was not right in concluding that the petitioner's husband was not entitled to the second and the third higher grade scales under Government Resolution dated July 5, 1991 because the second higher grade scale could have been given to him on completion of 18 years of service after June 1, 1986. It is true that the late husband of the appellant had filed an appeal before the Tribunal and same was not admitted, but it is relevant to note that neither the rights of the husband of the appellant nor the rights of the appellant were adjudicated upon on merits. Therefore, non-admission of the appeal cannot be treated as a bar to the reliefs which are claimed by the appellant in the petition. The communication dated May 9, 1997 which is at Annexure I is applicable to those employees who are in service or who might have retired after July 31, 1994. But so far as those employees who have retired prior to July 31, 1994 are concerned, the old scheme envisaged by Government Resolution dated July

5, 1991 would continue to apply because of express terms contained in clause 3 (28) of the Government Resolution dated August 16, 1994.

10. The net result of the above referred to discussion is that the appellant has made out a case for direction to the respondents to grant the second and the third higher grade scale to her husband from 4.8.1984 and 4.8.1993 respectively and to pay the resultant amount to her as also to revise her pension accordingly. The impugned judgment is, therefore, liable to be set aside.

11. For the foregoing reasons, the appeal succeeds. The judgment dated November 21, 1998 rendered by the learned Single Judge in Special Civil Application No. 335 of 1998 which is impugned in the appeal is hereby set aside. The petition filed by the appellant partly succeeds. The respondents are directed to consider the matter and take decision regarding fixation of higher pay scale to the husband of the appellant at the end of 18 and 27 years of service as may be admissible under the Government Resolution dated July 5, 1991, as early as possible and preferably within three months from the date of receipt of the writ. On fixation of pay as may be admissible under the Government resolution dated July 5, 1991, whatever amount may be found due and payable to the petitioner shall be paid to her within two weeks from the date of taking that decision. As observed earlier, the petitioner is entitled to family pension as well as gratuity payable to her husband. Therefore, the pension payable to her as well as gratuity shall also be revised within two months from the date of fixation of pay under the Government Resolution dated July 5, 1991. Thereafter the amount of gratuity shall be paid to the petitioner forthwith whereas the revised pension shall be paid regularly to her. The petition accordingly is partly allowed and rule is made absolute to the extent referred to hereinabove. There shall be no orders as to costs all throughout.

12. Office is directed to send a copy of the writ to each respondent forthwith.

(J.M. Panchal, J.)

9.3.2000. (A.M. Kapadia, J.)

(karan)